

OCT 16 2003

SUNRISE FAMILY SERVICES SOCIETY

Every Sunrise brings a new beginning

October 7, 2003

U.S. Department of State
CA/OCS/PRI
Adoption Regulations Docket
Room 2201
C Street, NW
Washington, DC 20520

Dear Sir/Madam:

Re: Adoption of the Convention on Protection of Children and
Co-operation in Respect of Intercountry Adoption
(Hague Convention) in the United States

The United States government is to be congratulated for showing leadership to the world in introducing a comprehensive approach to implementing the Hague Convention.

To date, the introduction of the Hague Convention in other countries has often been haphazard and confusing. The lack of clarity of process has caused problems in many countries. (Canada is the exception, as it has an efficient and well-run Hague system).

I hope that your country's responsible approach is followed by other countries in the future. The comments set out below relate mostly to the children leaving the USA for adoption in other countries.

Standard 96.53:

Standard 96.53(b) deals with an accredited agency approving a background study originally prepared by an exempted provider. It specifies that the approval must include items specified in subclauses 1 to 4. Should not the items listed as 2 to 4 *also* be required under clause (a) (i.e. a report originally prepared by an accredited provider)?

OCT 16 2003

Standard 96.54:

This standard sets out what are "reasonable efforts to find a timely adoptive placement in the US". It sets out a process as to what is to happen.

The³ section, however, starts out with three exceptions to the rule. It is *not* clear how these exceptions should proceed under the Hague. These should be set out *clearly* as the majority of children going to Canada or Europe will likely fall under one of the exceptions (birth parents have identified specific adopting parents). The exceptions, and our comments, are:

(i) **Adoption by a Relative:**

Persons who qualify as an overseas relative should be spelled out clearly by degree of consanguinity (i.e., uncle, cousins, nephews, etc.). If this is not spelled out carefully, it will be abused ("relative" is a vague term).

(ii) **Identified Specific Adoptive Parents:**

Since the requirement for a court hearing is exempted for these adoptions, how will they work? Will the accredited ASP in the US be able to approve and send children directly to the "Accredited Body" in Canada (i.e., a Canadian "Hague-approved adoption agency") or to the Central Authority? In Canada, there is no federal Central Authority. Each province has its own Central Authority (except Québec, which has not yet joined the Hague at this date). These questions also apply to European and other countries which have signed the Hague. The majority of children leaving the US for adoption will fall under this exception so the rules should clearly set out the process.

(iii) **Special Circumstances Accepted by the Court:**

Unlike the previous two exceptions, this one requires a court hearing. What happens if the judge grants the special circumstances order? For example, children in the permanent care of a US state government would likely fall under this exception. Will the state government then be able to send the child directly to the Canadian accredited body (the agency) or the Canadian Central Authority? (These comments also apply to Hague signatories other than Canada).

Standard 96.55:

This standard sets out what information is provided to the Secretary and to the State Court in an adoption. Parts 1 to 5 of subclause (d) set out what information is to be given to the State Court. What happens in the exception cases discussed above (see §.96.54(a))? In two of the three exceptions, no court hearing is actually going to be held. What is the process if no court hearing happens?



It should also be made clear that §.96.55(d) does *not* apply to the exceptions of §.96.54(a), or at least to the first two exceptions.

Since the third exception (special circumstances) requires a court hearing anyway, does §.96.55(d) apply to this exception? It should be made clear.

Accrediting Foreign Agencies

Article 2 of the Hague Convention provides:

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Pursuant to that section, agencies from other countries will apply to the US Secretary of State for permission to open an office and act in the USA.

In British Columbia, the implementing statute (Part 4 of the *Adoption Act*) contemplates that happening and provides for it:

Authority of foreign bodies

53. If authorized by the director, a body accredited in a contracting state may act in British Columbia.

Authority to act abroad

54. The director may authorize a body accredited in British Columbia to act in a contracting state.

A clear process should be spelled out in the regulations for how a foreign "accredited body" agency under the Hague Convention would become "authorized" under §12 of the Convention. In addition, any "accreditation process" for the foreign body should also be spelled out clearly.

I foresee agencies from Canada, England, Sweden, India or from anywhere else possibly wanting to become "authorized" in the USA.

Since the regulations spell out so many rules in great detail, it would be a mistake not to include a section which sets out these rules clearly as well.



OCT 16 2003

The definition section could also contain a defined term to describe a foreign Hague "accredited body".

Yours truly,



DOUGLAS R. CHALKE
Executive Director
Sunrise Family Services Society
#1500 - 701 West Georgia Street
Vancouver, British Columbia V7Y 1K8
Canada

